TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Ridgeview Properties Map 163-00-0, Parcel 122.00 Mixed Use Property Tax Year 2005	))))	Davidson County

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The Davidson County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$ 6,996,000	$ -0-	$6,996,000	$ 2,798,400

Use Value $42,480

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on October 26, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This jurisdictional hearing was conducted on March 15, 2007, at the Division of Property Assessment's Office in Nashville. Present at the hearing were Attorneys Steve Jasper and Michael Sontag of Bass, Berry & Sims, the taxpayers attorneys; Dean Lewis and Dennis Donovan from the Metro. Property Assessor's Office with Attorney Margaret Darby from the Department of Law.

Findings of Fact and Conclusions of Law

The subject property consists of a farm with a portion of the property enjoying Greenbelt classification located at E/S Bell Road, North of Mt. View Road, in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer **of a change of assessment** prior to the meeting of the County Board. (Emphasis supplied) T.C.A. §§ 67-5-508(b) (2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

> The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such

> appeal from the taxpayer up to **March 1st of the year subsequent to the year in which the assessment is made** *(emphasis added).*

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and **owners of property are charged with knowledge of them**. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer 's control**. *(Emphasis added), Associated Pipeline Contractors Inc.,* (*Williamson* County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets, (*Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from complying with the law. It is the taxpayer's burden to prove that they are entitled to the requested relief.

Mrs. Darby, on behalf of the Assessor's Office, argues that every year in October, taxes become due and payable by every property owner that this is not new information and the appeal process does not change. On or about April 15, 2005, the Property Assessor, as required by statute, sent to all owners of property as of January 1, 2005, a *Notice of Appraised Value, Classification and Assessment* in Davidson County[1]. If a property owner believed an error was made in the assessment or classification, their 'rights and remedies' were spelled out in that Notice. The Notice specifically stated that *"The Metropolitan Board of Equalization will convene . . . and begin to hear cases on June 1st, 2005, with the last date to schedule appointments for hearings being June 17th, 2005*". In this case, these taxpayers acquired the subject property on September 30, 2005, with a request that all 'future tax bills' be sent to an address of the new owners.

The tax records reflect that the 2005 taxes were paid in two installments, the first on October 25, 2005 and the second on February 28, 2006 (the later under protest).[2] Since 2006 was not a reappraisal year, no change notice was sent to property owners, there was no change in the subject property. The attorneys for the taxpayers requested and received a "duplicate" 2005 Notice on September 28, 2006, when according to their brief, "the current owner had learned of the rollback tax assessment on the property during a titled search in connection with an effort to refinance the property" they subsequently filed their appeal with the State Board of Equalization on October 26, 2006,(almost eight months after the March 1st deadline). The issue is one of timeliness that would confer jurisdiction to the State Board.

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[1] 2005 was a reappraisal year for Davidson County so notices were sent to every property owner.
[2] The Administrative judge takes Judicial Notice of this public record, Rule 202 TN Rules of Evidence.

There is no argument that the current taxpayers/appellants, Ridgeview Heights, LLC are the *real parties in interest* as it is their property that is the subject of this appeal. Appeal of Vivian & Russ Ragsdale, Davidson County Tax Year 2001, Assessment Appeals Commission, Tennessee State Board of Equalization, August 13, 2003; finding reasonable cause exist in situations where notice was sent to *prior* owners. In *Ragsdale* the administrative judge determined this did not make any difference since even if no notice had been sent, the taxpayers would have had only until forty-five days from the tax billing date to appeal to the State Board and they did not meet this requirement either. The Commissions rationale in determining that reasonable cause exist to excuse the late appeal to the State Board hinges on:

> . . . it is apparent that **no effective notice of the new assessment was sent to those most interested in receiving it.** This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded reasonable opportunity to appeal the new assessment (emphasis added).

Chancellor Richard Dinkins from Part IV of the Davidson County Chancery Court has affirmed the findings of the Assessment Appeals Commission [3] stating:

> The custom and practice is for the Assessor to send the change of appraisal notice to the owner as of January 1, the assessments notice in this case was sent to the former owner on April 17th. At the time the property sold, 2001 taxes were not due and payable, and the first notice the *Ragsdales* received that their property had been assessed was a courtesy tax bill sent to them in November 2001. . . . The Ragsdales have shown that they did not receive notice of the reassessment and, consequently, could not have known of the necessity to appeal. ***Upon receiving notice, they acted promptly and in accordance with the statute.*** [Emphasis added]

The purpose of the notice statue is one of due process; appropriate notice so the property owner knows what their tax liability is so that they can conduct their affairs and properly pay what is owed and it also allows those who disagree to seek a change in the assessment or classification. Parties can not act if they do not know; does it make a difference if the Notice is made to lay persons versus more sophisticated business persons? The *Ragsdales* were lay persons who were the victims of bad timing in the purchasing of their property; the current owners are presumably sophisticated businessmen used to dealing with multi-million dollar properties and its ramifications. Was the Commission concerned with the apparent lack of 'fairness' at the result that denying jurisdiction would have rendered on these ordinary tax payers? Should the sophisticated businessmen be treated differently?

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[3] Decision entered on April 18, 2006 in Case Number 04-1811-IV.

When they acquired the property on September 30, 2005, Exhibit B to the Deed shows that the parties were very much aware of the property tax issues and how the sale may affect the tax liability.[4] Therefore, they were certainly put on 'notice' of the tax liability issue. The usual procedure is that once a deed has been filed in the Register of Deeds Office, a copy is shortly sent (no one knew the exact time frame) to the Assessor's Office for the new owners' names to be entered into the records by the County Assessor of Property. They have stated at other hearings that the policy of the Assessors Office is to have their records department enter the information into their computer; then apparently the Davidson County Trustees[5] get the ownership information from the Assessor's Office and send out the Tax Bills when the property taxes are due.

In this case the procedure was followed but no Notice was sent in 2006 because there was no change in the assessment or classification of the subject property, if the property owners had not been trying to refinance presumably they would have not known until they received their tax bill in October of 2006, would there a different result?

Upon careful analysis of the applicable statutes, the Administrative Judge finds that reasonable cause does not exist justifying the failure to first appeal to the Davidson County Board of Equalization and thus the State Board of Equalization does not have jurisdiction to hear this appeal.

Since the taxpayer seeks to change the present *status quo*, they have the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1). While the argument of the taxpayers is interesting and notwithstanding the *Ragsdale* opinion, which I find distinguishable[6], the taxpayers had knowledge of the tax liability and its ramifications and certainly provisions could have been made in the deed to indemnify the new owners. The administrative judge is of the opinion that Mrs. Darby's analysis is more accurate, under T.C.A. § 67-5-1412(e) March 1st was the absolute, for lack of better terminology, drop dead date to file the Appeal, otherwise the time frames would be meaningless.

Order

It is therefore ORDERED that the following values shall be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$ 6,996,000	$ -0-	$6,996,000	$ 2,798,400

Use Value $42,480

[4] Paragraph 4 of Exhibit B shows that provisions were made for the payment of rollback taxes.
[5] It is the Trustees statutory obligation to send the "Tax Bills" to the property owners so that they will know what tax amount is due.
[6] Aside from the laypersons vs. businessman distinction, Ragsdale involved residential property, this involves Commercial/Greenbelt property.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of May, 2007.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Michael D. Sontag, Esq.
Stephen J. Jasper, Esq.
Margaret Darby, Esq.
Jo Ann North, Property Assessor